



EYEWITNESS IDENTIFICATION

FC No.: 624

Date: 12-21-15

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Purpose

Eyewitness identification is one of many tools used by law enforcement in the investigation of crime ***and can be an important component of a criminal investigation.*** Defense attorneys vigorously challenge this investigative tool and therefore, it is critical that eyewitness identification be conducted in a professional, structured manner and be supported by written documentation and physical evidence. The purpose of this directive is to establish guidelines for obtaining accurate eyewitness identification consistent with the Annotated Code of Maryland, Public Safety Article, Section 3-506 ***and 3-506.1.***

II. Policy

- A. It is the policy of the Montgomery County Department of Police to avoid any action that would be unduly suggestive during any eyewitness identification process.
- B. It is the policy of the Montgomery County Department of Police that all eyewitness identification be conducted in a structured, professional manner designed to clear the innocent as well as identify suspects in criminal offenses. ***The department recognizes that it is a law enforcement responsibility to protect the innocent from conviction, as well as to assist in the conviction of the guilty.***
- C. It is the policy of the Montgomery County Department of Police that a criminal investigation will not be concluded or otherwise cease based solely on eyewitness identification. Investigations will continue until all physical evidence has been collected and examined, all witnesses identified, and all reasonable leads explored.
- D. It is the policy of the Montgomery County Department of Police that any identification or non-identification of a suspect be documented in writing along with any comments by the eyewitness concerning the identification or non-identification.
- E. It is the policy of the Montgomery County Department of Police that any photograph of an individual identified by an eyewitness be retained as evidence and handled as such.

III. Definitions:

- A. Administrator – means the person conducting an identification procedure.**
- B. Blind – means the administrator does not know the identity of the suspect.**
- C. Blinded – means the administrator may know the identity of the suspect but does not know which photograph/line-up member is being viewed by the eyewitness.**
- D. Eyewitness – means a person who observes another person at or near the scene of an offense.**
- E. Filler – means a person who is not suspected in the offense being investigated but included in the photographic array or live line-up for the eyewitness to view.**

IV. Photographic Arrays

- A.** A photo array is the display of a photograph of the suspect along with filler photos of other individuals whose physical characteristics resemble the suspect's description or appearance at the time of the incident. The photo array can be used to develop probable cause, identify a suspect, and eliminate the innocent. A photo array should only be shown to an eyewitness if they can identify a suspect.
- B. *The photo array must contain a minimum of five (5) fillers to be used in addition to the suspect, for a total of six (6) photographs to be shown to the eyewitness.*** There must not be any identifying marks such as placards or height markers. Photos must be numbered on the back in order of the presentation and the officer's initials should be on the back. The array will only include one photo of the suspect. The photos must be of similar size and the individuals in the photos should all be facing the same direction. When selecting fillers, use people who have similar features, such as facial hair, hair color, and hairstyles.
- C.** If possible, two officers should be present during the photo array viewing. When presenting the array, officers will avoid saying anything that might be suggestive or that will reveal the identity of the suspect. ***Photo arrays will be conducted using sequential rather than simultaneous presentation.***
- D.** Before the photo array is conducted the eyewitness must be instructed, if applicable, not to turn over any of the photos. Present the array in a private setting where there will be no distractions. If the array will be presented to more than one eyewitness, do not permit the eyewitnesses to discuss the array with each other. The officer will complete form MCP 619, "Photographic Array Information Sheet." Note the date and time the array was viewed, who was present during the viewing, and that the directions were read to the eyewitness. The officer should record all statements made by the eyewitness including identification, non-identification, or misidentification always using the eyewitness's exact statements. Once the array is completed, the eyewitness will not be told whether or not they identified a suspect. Following presentation, the array must be preserved for court, regardless of whether or not the suspect is identified.
- E. *The law requires the administrator showing an eyewitness the array of photographs to be blind or blinded. This can be achieved in the following ways:***
 - 1. *The officer presenting the photographic array to the eyewitness does not know the identity of the suspect.***
 - 2. *The officer presenting the photographic array places the individual photographs in individual folders, shuffles the folders and then randomly numbers each folder. Not knowing which folder contains the photograph of the suspect, the officer presents the folders sequentially so the officer cannot see or track which photo is being presented to the eyewitness until after the procedure is completed.***

3. *The officer presenting the photographic array uses an automated computer program to display the photographs, which prevents the officer from seeing which photo the eyewitness is viewing until after the identification procedure is completed.*

V. *Live Line-Ups*

- A. *A live line-up is an identification procedure involving the live presentation of a number of people to an eyewitness for the purpose of obtaining identification. A live line-up differs from a show-up in that it is conducted in a controlled setting, such as a police station, a known suspect is in the mix and the participants are aware that an identification procedure is being conducted. A minimum of four (4) fillers must be used in addition to the suspect, for a total of five (5) individuals in a live line-up. When utilizing a live line-up during an investigation, the law requires the officer presenting the live line-up to be blind or blinded. This can be achieved in two ways:*
 1. *The officer administering the live line-up does not know the identity of the suspect.*
 2. *The live line-up is presented sequentially and the officer administering the line-up does not know which line-up member the eyewitness is viewing or the order in which the line-up is being presented.*
- B. *The purpose of a **live** line-up is to identify a suspect and to eliminate the innocent. When there is a need to conduct a **live** line-up, the officer or detective will contact the Montgomery County State's Attorney's Office so they can obtain the necessary court order, notify the defendant's attorney, and video tape the procedure. Once a suspect is charged, the decision to use a **live** line-up will be that of the prosecutor handling the case. Officers should always fully document the **live** line-up, including whether or not identification is made. In a **live** line-up, the similarities between **fillers** and the suspect/defendant should include race, age, height, weight, hairstyle, hair coloring, build, facial hair, and clothing. Only one eyewitness will view the **live** line-up at a time and the line-up should not include any individual known to the eyewitness.*

VI. *Additional Procedures When Conducting Photographic Arrays or Live Line-Ups*

- A. *If there are multiple eyewitnesses to an event, the identification procedure must be conducted separately for each individual witness.*
- B. *If there are multiple eyewitnesses to the event, the suspect must be placed in a different position for the identification procedure for the eyewitness.*
- C. *Witnesses must be separated prior to any identification procedure and instructed they cannot communicate with one another about the identification procedure, either before or after the process.*
- D. *Eyewitnesses must be told the suspect "may or may not be among the persons" presented in the identification procedure presented.*
- E. *Officers must inquire and document in writing the eyewitnesses own words and their level of confidence that the person they identified is the perpetrator. The eyewitnesses' words must be documented verbatim. This document must be signed by the witness.*
- F. *Once the photo array or live line-up is completed, the victim or eyewitness will not be told whether or not they have identified a suspect.*
- G. *A written record of the identification procedure must include the following:*
 1. *All identification and non-identification statements of the eyewitness;*
 2. *The names of all persons present during the identification procedure;*
 3. *The date and time of the identification procedure;*
 4. *Any eyewitness identification of a filler; and*

5. All photographs used in the identification procedure.

- H. If an eyewitness has previously participated in an identification procedure in connection with the identification of another person suspected of involvement in the offense, the fillers in the identification procedure shall be different from the fillers used in any prior identification procedure with the same eyewitness.**

VII. Show-Ups

- A. A show-up is the display of a single suspect to a witness in an effort to obtain identification. *Absent exigent circumstances, a show-up should only be used soon after a crime has been committed, typically within two hours.***
- B. Detaining a person in order to arrange a show-up is lawful where the officer has reasonable suspicion that the suspect has committed a crime, even if probable cause has not yet developed.** The suspect does not have any right to refuse to participate in a show-up nor does the suspect have any right to an attorney.
- C. The preferred practice is to bring the victim or eyewitness to the suspect *for possible identification. In situations where that may not be feasible, the suspect may be taken to a location where he/she can be viewed by an eyewitness. Suspects should not be brought into crime scenes as contamination may occur.***
- D. Officers must inquire and document in writing the eyewitnesses own words and their level of confidence that the person they identified is the perpetrator. The eyewitnesses' words must be documented verbatim. This document must be signed by the eyewitness.**
- E. The show-up must always be documented in the report whether or not identification is made. The person's name, address, date of birth, social security number, and physical description are the preferred identifiers to be included in the report. The report should also document the location of the show up, the lighting conditions, weather conditions, circumstances of the stop, the distance from the suspect, whether the suspect was handcuffed or not, and any statements made by the suspect and the eyewitness. When possible, officers will protect the victim/witness from being observed by the suspect for safety reasons (i.e., future intimidation).**

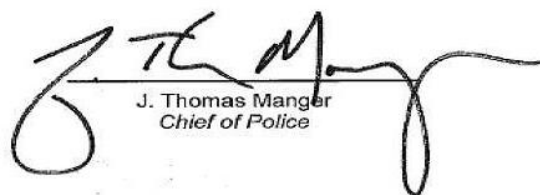
VIII. Composites

- A. A composite is the renderings of recollections of a witness describing a suspect's appearance. A computer program that features a variety of different facial features may complete composites.**

IX. CALEA Standards: 42.2.11 and 42.2.12

X. Proponent Unit: ISB Administration

XI. Cancellation: This directive cancels Function Code 624, dated 02-15-08.



J. Thomas Manger
Chief of Police